



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-61/55082

PRELIMINARY RECITALS

Pursuant to a petition filed October 4, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Trempealeau County Dept. of Social Services in regard to a request to increase the spousal asset limit, a hearing was held on November 15, 2002, at Whitehall, Wisconsin.

The issue for determination is whether the spousal asset limit may be increased pursuant to the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Richard Wallinger, ESS
Trempealeau County Dept. of Social Services
36245 Main St.
Whitehall, WI 54773-0067

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of a nursing home Trempealeau County.
2. The petitioner's spouse lives in the community.
3. The petitioner and his spouse have a total of \$126,626.97 in countable assets.

4. The petitioner receives \$212 in social security each month. The petitioner receives \$520 in social security each month.
5. The assets of the petitioner and his spouse are in various certificates of deposit and bank accounts. The accounts produce between 1.24 and 4.88% in annual interest. *Exhibit 1*. The total income produced by these assets each month is less than \$1,203.

DISCUSSION

Medical assistance rules require nursing home residents to “apply their available income toward the cost of their care.” §HFS 103.07(1)(d), Wis. Adm. Code. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. *See* §49.455, Wis. Stats., and 42 U.S.C. §13964-5. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,990 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$590. *Id.*

In addition to income, an institutionalized person may allocate assets to the community spouse. The petitioner and her spouse have \$126,626.97 in total assets. Because an institutionalized person can have up to \$2,000 in assets, couples in this position generally are allowed to retain \$65,313.49 in assets and still maintain one of the spouse’s eligibility for medical assistance. Nevertheless, if the community spouse’s income falls short of his needs, he may request through a fair hearing that the asset limit be increased so that more income can be produced. The administrative law judge must assign sufficient assets to generate “enough income to raise the community spouse’s income to the minimum monthly maintenance needs allowance...” §49.455(8)(d), Stats. However, Wisconsin law, in what is referred to as the income first rule, requires that the institutionalized spouse make all of her income, except for the sum equal to the \$45 personal needs allowance, available to the community spouse before the asset limit is increased. §49.455(8)(d), Stats.; 49.45(7)(a), Stats. Wisconsin courts had overturned this requirement, but the United States Supreme Court reinstated it. *Wisconsin Department of Health and Family Services v. Irene Blumer*, 534 U.S. ___, 122 S. Ct. 962 (2002) reversing and remanding *Blumer v. Wisconsin Department of Health and Family Services*, 237 Wis. 2d 810, 615 N.W.2d 647 (2000). Thus the income first rule again applies.

The petitioner and his spouse receive \$732 in social security between the two of them. This means that when the petitioner’s \$45 personal needs allowance is deducted her spouse’s income falls \$1,203 short of that considered necessary to meet his basic needs. The petitioner and his spouse have their money in several bank accounts and certificates of deposit that pay between 1.24% and 4.88% in annual income. Their list of exhibits did not supply the income earned each month from each account, but even if all of the assets were paying 5% per year, they would only average \$527.61 each month from those assets. Because this is well below the additional \$1,203 that the husband is presumed to require each month, all of the couples assets may be transferred to him.

CONCLUSIONS OF LAW

1. The petitioner can allocate all of her income available after she receives her \$45 personal needs allowance to her spouse because he requires this income to meet his minimum monthly needs.
2. All of the couple’s assets can be transferred to the husband because he requires all of their assets to generate sufficient income to meet his minimum monthly needs.
3. The petitioner is financially eligible for medical assistance.

NOW, THEREFORE, it is

ORDERED

That this matter be remanded to the county agency with instructions that within 10 days of the date of this decision it take the following action:

1. Certify the petitioner as eligible for institutional medical assistance retroactive to the date she entered the nursing home, provided she met all the requirements for eligibility other than the program's asset limit on that date.
2. Allow the petitioner and her spouse to transfer all of the couple's assets into the community spouse's name.
3. Allocate all of the couple's income other than the petitioner's \$45 personal needs allowance to community spouse and set the petitioner's share of her medical costs at \$0.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 22nd day of
November, 2002

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
122/MDO